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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re H.J. et al., Persons Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.M.,

Defendant and Appellant.

E072710

(Super.Ct.No. INJ1300083)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.

Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Anna M. Marchand and Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case, L.M. (Mother) filed a petition under Welfare and

Institutions Code section 388 asking the juvenile court to return her minor daughters to her custody.<sup>1</sup> In the alternative, she asked the court to order reunification services for her. The court denied the petition and then terminated parental rights, freeing the children for adoption. (§ 366.26.) Mother appeals from the order denying her section 388 petition and the order terminating her parental rights. We affirm.

## BACKGROUND

### *I. Detention*

In February 2017, the Riverside County Department of Public Social Services (DPSS) received referrals alleging general neglect of H.J.1, H.J.2, and their three older half brothers. (H.J.1 and H.J.2, but not their half brothers, are the subjects of this appeal.) At the time of the referrals, H.J.1 and H.J.2 were four and two years old, respectively. Mother and the children were living at a shelter, and she would ask other residents to watch the children while she was out all day and late into the night. H.J.1 and H.J.2 were found roaming the halls of the shelter alone several times. The family's room was filthy and smelled of urine. Mother's case manager at the shelter reported that Mother had tested positive for methamphetamine in December 2016 and February 2017.

DPSS filed a petition alleging that (1) the children were at substantial risk of serious physical harm as a result of Mother's failure to adequately supervise or protect them and her inability to provide regular care for them (§ 300, subd. (b)), and (2) she had failed to make any provision for their support (§ 300, subd. (g)). More specifically, the

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code unless otherwise indicated.

petition alleged that Mother had an untreated history of abusing controlled substances, including methamphetamine, and that she led a “transient lifestyle.” The petition also contained allegations as to H.J.3, the girls’ father (Father), who is not a party to this appeal. Father was incarcerated at the time. The petition alleged that (1) the girls were at substantial risk of serious physical harm as a result of Father’s willful or negligent failure to provide them with adequate food, clothing, shelter, or medical care (§ 300, subd. (b)), and (2) he had failed to make any provision for their support (§ 300, subd. (g)). The court detained the girls from the parents and ordered twice weekly supervised visits for Mother.

## II. *Jurisdiction and Disposition*

In preparation for the jurisdiction and disposition hearing, the social worker interviewed Mother at her inpatient substance abuse treatment program. Mother entered the program in April 2017 and completed it 45 days later. She reported that she had used methamphetamine ““off and on”” since age 18. (Mother was 31 years old at the time of these events.) She was sober from 2008 to 2011 and relapsed after her father died. She had another six-month period of sobriety in 2013 and 2014 when she was in a treatment program. She relapsed in May 2016 when the father of one of her sons died, but it was unclear how long she was sober before that. She started another period of sobriety in September 2016 when she and the children moved into the shelter. She started using again in December 2016.

After completing the inpatient program, Mother enrolled in an intensive outpatient treatment program. The social worker interviewed her again after her enrollment.

Mother wanted to be with her children, but she was “scared to have her children returned to her care too soon as she want[ed] to maintain her sobriety.” She wanted to ensure that she had the tools and support necessary to care successfully for them and stay sober. She did not want all five of the children returned to her custody simultaneously. Mother’s counselor in the outpatient program shared that Mother had a ““healthy fear”” of the children returning to her custody. The counselor thought that this showed Mother’s awareness of her history and triggers and her determination to maintain sobriety.

Mother consistently visited H.J.1 and H.J.2 from March to June 2017 and progressed from supervised to unsupervised visits. DPSS recommended that the court return the girls and their youngest half brother to Mother’s custody and order family maintenance services.

In July 2017, the court found the allegations of the petition to be true. It ordered H.J.1, H.J.2, and their youngest half brother placed with Mother, with family maintenance services for Mother, upon verification that Mother had secured housing. The court ordered family reunification services for Mother with respect to the other two half brothers, who were to remain in out-of-home placements.

### *III. Six-Month Review Period*

The court continued family maintenance services at the six-month review hearing in January 2018, even though Mother had apparently relapsed. The court admitted into evidence a DPSS report filed on December 21, 2017, but the record does not contain that report or any other for the reporting period. The court warned Mother that she needed “to make some significant progress in this case” and indicated that it was “not going well,

frankly.”

#### *IV. Section 342 and Section 387 Petitions*

In April 2018, DPSS received a referral alleging that H.J.2 had been sexually abused. She was complaining that her “bottom” hurt and said, “‘It’s because something goes in, and I don’t like it and I tell him no.’” She told the social worker that Father “‘put his hand in [her] poop hole,’” and Mother was asleep when this occurred. H.J.2 also saw Mother smoke “‘white candy’” out of a pipe with her boyfriend and Father.

H.J.1 told the social worker that Father has “grabbed her ‘pee pee’ and has squeezed it tight.” She had also seen Mother smoke “white stuff” out of a pipe with her boyfriend and Father.

Mother told the social worker that H.J.2 was never alone with Father. But she had recently found her boyfriend lying on the bed with both girls, which she found suspicious. As to the allegations of drug use, Mother admitted that she was using methamphetamine again. She failed to drug test from December 2017 through March 2018, and she did not follow through with her outpatient program. Still, she denied using methamphetamine in the girls’ presence, denied using it with Father or her boyfriend, and denied being under the influence while caring for the girls. She said that she used only when the girls were with their maternal grandmother.

Mother’s boyfriend denied sexually abusing the girls. He reported that he and Mother smoke “dope” on a daily basis, and “if they are not fighting[,] they are ‘smoking dope.’”

During a forensic interview of the girls, H.J.2 denied any sexual abuse but

continued to state that her buttocks hurt. H.J.1 also denied any sexual abuse but continued to report that Mother smoked a white substance out of a pipe. Physical exams of the girls revealed no evidence of sexual abuse, although H.J.1 had a urinary tract infection, and both girls had a foul body odor and poor hygiene.

On the basis of the new allegations, DPSS filed a subsequent petition under section 342 alleging that (1) H.J.1, H.J.2, and their youngest half brother were at substantial risk of serious physical harm as a result of Mother's actions (§ 300, subd. (b)), and (2) Mother had failed to protect H.J.2 from sexual abuse (§ 300, subd. (d)). The court detained the children from Mother and ordered supervised visitation for at least one hour per week.

In May 2018, DPSS filed a supplemental petition under section 387 and asked the court to dismiss the section 342 petition. The section 387 petition alleged that the previous disposition had not effectively protected the children in that Mother had resisted court-ordered substance abuse treatment while caring for the children.

The court dismissed the section 342 petition without prejudice. As to the section 387 petition, the court found the allegations true and denied Mother reunification services.<sup>2</sup> It set a section 366.26 hearing to select and implement a permanent plan for

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<sup>2</sup> The court conducted both (1) the jurisdiction/disposition hearing on the section 387 petition as to H.J.1 and H.J.2 and (2) the 12-month review hearing as to their two older half brothers at the same time. At that hearing, the court terminated Mother's reunification services with respect to the two older half brothers. The court's denial of reunification services to Mother at disposition on the section 387 petition was based, in part, on the termination of reunification services as to those half siblings. (§ 361.5, subd. (b)(10).)

H.J.1 and H.J.2. It also reduced Mother's visitation to biweekly rather than weekly.

#### *V. Change in Placement and De Facto Parent Request*

The court continued the section 366.26 hearing at DPSS's request. H.J.1 and H.J.2 were placed separately from their half brothers. The girls' current foster parents were not willing to provide permanency. DPSS had identified a home that was willing to adopt and appeared to be a good fit, and it wanted more time to explore this option.

In November 2018, DPSS placed H.J.1 and H.J.2 in their new foster home, which was their fourth placement. By this time, H.J.1 was nearly six years old, and H.J.2 was four years old. They were adapting well to the new placement.

In March 2019, the girls' foster mother filed a de facto parent request and also asked that the court terminate Mother's visitation.<sup>3</sup> According to the foster mother, H.J.1 and H.J.2 had been returning from visits "full of anxiety." They told their foster mother that Mother "made them promise not to get adopted." Mother also told them that the foster mother was lying to them, and that if they "chose to get adopted," it meant that they did not love Mother and would never see her again. In addition, H.J.2 usually acted out two days before a visit. She had "all out melt downs" in which she kicked the walls and screamed. H.J.2's behavior had been improving with therapy and the foster mother's efforts. Her outbursts had "lessened," and whereas she had been wetting the bed almost every night with the previous foster mother, she was doing it now only once every two

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<sup>3</sup> "On a sufficient showing, the court may recognize the child's present or previous custodian as a de facto parent and grant him or her standing to participate as a party in the dispositional hearing and any hearing thereafter at which the status of the dependent child is at issue." (Cal. Rules of Court, rule 5.534(a).)

weeks or so.

Before the hearing on the de facto parent request, DPSS produced visitation logs dating back to July 2018. The logs generally described the biweekly visits in positive terms. Mother often received strong marks for doing things like redirecting the girls, engaging them in problem solving, providing nurturance and emotional comfort, or responding to their physical and emotional needs. She would bring them food, drinks, or toys, and the children were generally happy at the beginning and end of visits. But the logs also revealed several troubling issues. At one visit, Mother asked the girls who they loved more—her or the foster parent. At another, Mother’s boyfriend appeared at the end of the visit. Mother told the girls to lie and give the foster parents a false name for her boyfriend. At yet another, six or seven unapproved people suddenly appeared at the end of the visit, again including Mother’s boyfriend. Mother falsely told the foster mother that the social worker had approved the visitors. The foster mother described the situation as an ambush and was visibly shaken.

The court denied the foster mother’s de facto parent request without prejudice. It concluded that the foster mother had been caring for H.J.1 and H.J.2 for too short a period, but it was willing to consider the request again in a few months. While the court did not terminate Mother’s visitation, it prohibited Mother’s boyfriend from attending visits, prohibited “inappropriate questions or insinuations” at visits, and prohibited “a group of people waiting in the parking lot and swarming the caretaker.”

#### *VI. Section 388 Petition and Section 366.26 Proceedings*

In April 2019, Mother filed a section 388 petition asking the court to return all five



of the children to her custody and order family maintenance services. Alternatively, she asked the court to order reunification services. She submitted evidence that she had completed another inpatient treatment program on April 2. While in the program, she regularly attended Narcotics Anonymous or Alcoholics Anonymous meetings and drug tested negative. She continued to attend support group meetings after the program, enrolled in the family preservation court program, and had recently started biweekly therapy sessions. She also consistently visited the children. Mother alleged that her requested changes promoted the children's best interests because she loved them, they were very bonded to her, and they were very bonded to each other. She asserted that the children would be devastated if H.J.1 and H.J.2 were adopted. (The girls were not placed with any of their siblings. DPSS was transitioning two of the half brothers to the same foster home, and the third half brother was in another foster home.) Mother submitted pictures of herself and the children smiling together.

The court set a hearing on whether to grant Mother an evidentiary hearing on the petition. It scheduled the hearing for the same date as the section 366.26 hearing.

In preparation for the section 366.26 hearing, the social worker reported that H.J.1 and H.J.2 were bonded with their foster mother and had adapted well to her home. They were demonstrating progress in understanding and expressing their emotions appropriately. H.J.2 had been physically aggressive toward H.J.1, but that behavior had improved in the foster mother's care. The girls enjoyed playing with the foster mother's two-year-old son and spending time with her extended family members. The foster mother was committed to adoption and was providing the girls "with a family full of love

and attention.” When asked about adoption, H.J.1 said, “I like living here,” and “I think yes!” H.J.2 said, “I want to stay here; she loves me so much.” They both referred to the foster mother as “mom,” responded positively to her directives, and sought comfort and affection from her.

The social worker was concerned about comments Mother made to the girls or their half brother during visits, including the incident in which she asked the girls whether they liked her or their foster mother more. Mother denied making inappropriate comments and said the foster parents were falsely accusing her.

The combined hearing on whether to grant Mother an evidentiary hearing and the girls’ permanent plan occurred in May 2019. After hearing argument on the section 388 issues, the court denied Mother’s petition. It concluded that (1) she had not shown sufficiently changed circumstances, and (2) even if she had, it was “extremely difficult, almost impossible . . . to say it’s in the best interest of the children to grant that hearing.” The court further explained: “I’m worried about the ability of the mother to maintain the course and stay sober and clean and do what’s right for her and her children. . . . [H]er circumstances are woefully inadequate to show that she has changed her circumstances. I can’t weigh mother’s couple months of sobriety with the long-term happiness and stability of the girls and say that it’s appropriate. [¶] . . . [¶] The children are in a stable environment. I’m sure you saw the addendum where you could tell the joy in their face and they are doing well, and I’m hoping they get a chance in life to be raised without abuse, without drugs, without that kind of environment. So I’m going to go in that direction, and I’m going to be denying mother’s [petition] as it’s filed at this time.”

Regarding the girls' permanent plan, Mother requested that the court select legal guardianship and not terminate parental rights pursuant to the parental bond exception. The court determined that the exception did not apply. It found: "There is no significant relationship, parenting relationship . . . that would hinder this Court's ability to terminate parental rights." The court further found that adoption was in H.J.1's and H.J.2's best interests and terminated Mother's and Father's parental rights.

## DISCUSSION

### *I. Denial of Mother's Section 388 Petition*

Mother argues that the court abused its discretion by denying her section 388 petition. We disagree.

Section 388 permits a parent of a dependent child to petition for a hearing to change, modify, or set aside any previous court order. (§ 388, subd. (a)(1).) The parent bears the burden of showing a "change of circumstances and that modification of the prior order would be in the best interests of the minor child." (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.)

The court has several options when presented with a section 388 petition. It may summarily deny the petition if it "fails to state a change of circumstance or new evidence" or "fails to show that the requested modification would promote the best interest of the child." (Cal. Rules of Court, rule 5.570(d)(1); accord *In re Alayah J.* (2017) 9 Cal.App.5th 469, 479.) It may grant the petition without a hearing if all of the parties have stipulated to the requested change. (Cal. Rules of Court, rule 5.570(f).) Absent a stipulation or summary denial, the court must either order a hearing on the

merits of the petition, or “order a hearing for the parties to argue whether an evidentiary hearing on the petition should be granted or denied.” (Cal. Rules of Court, rule 5.570(f)(1), (f)(2); accord *In re Alayah J.*, *supra*, at p. 479.)

In this case, the court chose the last option. It ordered a hearing “on whether the court should grant or deny an evidentiary hearing.” To secure an evidentiary hearing, the parent must make a *prima facie* showing on both factors—changed circumstances and the best interests of the child. (*In re Alayah J.*, *supra*, 9 Cal.App.5th at p. 478.) “[T]he allegations of the petition must be specific regarding the evidence to be presented and must not be conclusory.” (*Ibid.*) In determining whether the petition makes a *prima facie* showing, “the court may consider the entire factual and procedural history of the case.” (*In re K.L.* (2016) 248 Cal.App.4th 52, 62.) “We review a juvenile court’s decision to deny a section 388 petition without an evidentiary hearing for abuse of discretion.” (*Ibid.*)

The court did not abuse its discretion in this case. Regardless of whether Mother made a *prima facie* showing of changed circumstances, she did not make a *prima facie* showing that her proposed change would promote the girls’ best interests. Her conclusory allegations that the girls were very bonded to her and their siblings, or that they would all be devastated by the girls’ adoption, were not sufficient. The record shows that the girls were thriving in the foster mother’s care and wanted to be adopted. They referred to the foster mother as “mom” and sought comfort and affection from her. And while the visitation logs indicated that they were happy to see Mother and their siblings, they were happy at the end of visits as well. There was no evidence that they

were devastated when they had to leave Mother and their siblings.

Moreover, after the court has ended reunification efforts and set the matter for a section 366.26 hearing, the focus of the case shifts from the parents' interest in the care, custody, and companionship of the child to the needs of the child for permanency and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re J.C.* (2014) 226 Cal.App.4th 503, 527.) At this point, the child's "best interests are not to further delay permanency and stability in favor of rewarding" the parent for his or her "hard work and efforts to reunify." (*In re J.C.*, *supra*, at p. 527.) Mother's efforts at sobriety were commendable. But given her history of completing treatment programs and relapsing, and her relatively short period of recent sobriety, she did not show that she could meet the girls' needs for permanency and stability. Under the circumstances here, those needs were met by keeping the girls in their prospective adoptive home.

Mother argues that the court overemphasized the girls' foster placement, and that it "is not enough to simply compare the foster placement with the home of the parent." For support, she cites *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly F.*), which held that the court's evaluation of "'best interests'" should include more than "a simple comparison between two households." (*Id.* at p. 530.) That is, "whether a child is reared in a more mainstreamed or socioeconomically advantaged household is not dispositive under section 388." (*Id.* at p. 529.) *Kimberly F.* identified a nonexhaustive list of factors for evaluating a child's best interests under section 388, including: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent

and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*Id.* at p. 532.)

The court here did not engage in a “one-dimensional ‘better household’ test.” (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 530.) The court’s comments demonstrate that it was properly concerned with the girls’ need for permanency and stability. It was worried about Mother’s ability “to maintain the course and stay sober,” and it suggested that Mother’s “couple months of sobriety” did not provide stability. In other words, the court appeared concerned with the seriousness of Mother’s substance abuse, the fact that chronic substance abuse is not easily overcome, and its doubt that Mother had actually overcome her problem. *Kimberly F.* directs courts to consider precisely those factors. (*Id.* at p. 532.)

In sum, Mother did not make a prima facie showing that her proposed change would promote the girls’ best interests. The court did not abuse its discretion by denying Mother’s section 388 petition.

## II. *Termination of Parental Rights*

Mother argues that the court erred by terminating parental rights because the parental bond exception applied. We reject this argument.

When the juvenile court finds that a dependent child is likely to be adopted, it must terminate parental rights and select adoption as the permanent plan unless it finds that termination would be detrimental to the child under one of several exceptions. (§ 366.26, subd. (c)(1); *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The Legislature prefers adoption over the alternative permanency plans. (*In re L.Y.L.*, *supra*, at p. 947.)

“[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The parental bond exception applies if the court “finds a compelling reason for determining that termination would be detrimental to the child” because (1) the parent has “maintained regular visitation and contact with the child,” and (2) “the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) We review the court’s finding on the existence of the beneficial parental relationship for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) Whether “the relationship is a ‘compelling reason’ for finding detriment to the child” is a “‘quintessentially’ discretionary decision” that we review for abuse of discretion. (*Id.* at p. 1315.)<sup>4</sup>

The parent bears the burden of showing the parental bond exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343, 1345.) “[A] *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) The parent must establish “that his or her relationship with the child “‘promotes the well-being of the child to such a degree as to

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<sup>4</sup> “Appellate courts are divided over the appropriate standard of review for an order concerning the applicability” of the parental bond exception. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, S255839.) Some have reviewed the decision for abuse of discretion, others have reviewed it for substantial evidence, and still others have combined the two and taken a hybrid approach, as we do. (*Ibid.*) Our Supreme Court recently granted review of the issue and will therefore resolve “what standard governs appellate review of the [parental bond] exception to adoption.” (*In re Caden C.* (2019) 2019 Cal. Lexis 5373.)

outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”””” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Here, the court found that the relationship maintained during visitation did not benefit the girls significantly enough to outweigh the strong preference for adoption. Substantial evidence supports that determination, and the court therefore did not abuse its discretion by refusing to apply the parental bond exception. There is no dispute that Mother regularly visited H.J.1 and H.J.2 on a biweekly basis. But she did not demonstrate that they shared such a substantial, positive emotional attachment that terminating parental rights would greatly harm them. Mother relies on the positive reports in the visitation logs and, on that basis, argues that she was “fulfill[ing] her rightful role as the parent of these girls.” The reports were, indeed, generally positive, but this does not show that freeing the girls for adoption would greatly harm them. As we have discussed, there is no evidence that the girls were suffering greatly when they had to part from Mother, or that they suffered greatly in her absence.

Furthermore, the court could reasonably conclude that it was the foster mother, not Mother, who occupied the parental role in their life. By the time of the section 366.26



hearing, the girls had been out of Mother’s custody for just over a year. They had been living with their foster mother for six months. The foster mother had been tending to all of their daily needs for that period. They had already begun calling her “mom” and wanted to be adopted.

In short, it does not follow that because Mother had regular and loving contact with the girls, the parental bond exception applied. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) Mother did not establish that her relationship with the girls was so beneficial as to overcome the preference for adoption. The court did not err by refusing to apply the parental bond exception.

#### DISPOSITION

The orders denying Mother’s section 388 petition and terminating parental rights are affirmed.

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MENETREZ  
J.

We concur:

SLOUGH  
Acting P. J.

RAPHAEL  
J.